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11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 ANTHONY PETRU and MARCUS MATHIS,
Individually and on Behalf of All Others Similarly
Situating,

15 Plaintiffs,

16 vs.

17 APPLE INC.; HACHETTE BOOK GROUP, INC.;
HARPERCOLLINS PUBLISHERS, INC.;
18 MACMILLAN PUBLISHERS, INC.; PENGUIN
GROUP (USA) INC.; and SIMON & SCHUSTER,
19 INC.,

20 Defendants.

21 GRETCHEN ULBEE, Individually and on Behalf of
All Others Similarly Situated,

22 Plaintiff,

23 vs.

24 APPLE INC.; HACHETTE BOOK GROUP, INC.;
HARPERCOLLINS PUBLISHERS, INC.;
25 MACMILLAN PUBLISHERS, INC.; PENGUIN
GROUP (USA) INC.; and SIMON & SCHUSTER,
26 INC.,

27 Defendants.
28

CASE NO. 3:11-CV-03892-EMC

CASE NO. 4:11-CV-04490-DMR

**(1) ADMINISTRATIVE MOTION
TO RELATE CASES;**

**(2) DECLARATION OF RICHARD
S. HORVATH, JR. IN SUPPORT OF
THE ADMINISTRATIVE MOTION
TO RELATE CASES [filed under
separate cover];**

**(3) [PROPOSED] ORDER
GRANTING ADMINISTRATIVE
MOTION TO RELATE CASES [filed
under separate cover]**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that specially appearing defendant HarperCollins Publishers L.L.C. (incorrectly sued as "HarperCollins Publishers, Inc.") submits this Administrative Motion to Relate Cases pursuant to Civil Local Rules 3-12 and 7-11 to relate *Ulbee v. Apple Inc., et al.* (11-cv-4490 N.D. Cal.) (the "*Ulbee* Action") to the previously filed action captioned *Petru, et al. v. Apple, Inc., et al.* (11-cv-3892 N.D. Cal.) (the "*Petru* Action") and to request that the *Ulbee* Action be assigned to the Honorable Edward M. Chen for all purposes.

This Administrative Motion will be based on this notice, administrative motion, the accompanying memorandum of points and authorities and all other matters properly considered by the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Civil Local Rules 3-12 and 7-11, specially appearing defendant HarperCollins Publishers L.L.C. (incorrectly sued as "HarperCollins Publishers, Inc.") submits this administrative motion to relate the above captioned actions. The Honorable Edward M. Chen has already ordered that the following actions be administratively related to the action captioned *Petru, et al. v. Apple, Inc., et al.* (11-cv-3892 N.D. Cal.) (the "*Petru* Action") and assigned to his court: *Diamond v. Apple, Inc., et al.* (11-cv-3954 N.D. Cal.); *Gilstrap, et al. v. Apple, Inc., et al.* (11-cv-4035 N.D. Cal.); *Albeck v. Apple, Inc., et al.* (11-cv-4110 N.D. Cal.); *Ruane-Gonzales v. Apple, Inc., et al.* (11-cv-4500 N.D. Cal.); *Key v. Apple, Inc., et al.* (11-cv-04754 N.D. Cal.); and *Rivers v. McMillan, et al.* (11-cv-05080 N.D. Cal.) (collectively, "Related Actions"). Currently pending are motions to relate *Rossman, et al. v. Apple, Inc., et al.* (11-cv-04191 N. D. Cal.) and *Miller, et al. v. Hachette Book Group, Inc., et al.* (11-cv-05019 N.D. Cal.) (together with the Related Actions, the "California Related Actions") to the *Petru* Action. In this motion, HarperCollins simply requests that the Court complete this administrative process and relate this action, captioned *Ulbee v. Apple, Inc., et al.* (11-cv-4490 N.D. Cal.) (the "*Ulbee* Action"), to the *Petru* Action. In addition, HarperCollins requests that the *Ulbee* Action be transferred and assigned to the Honorable Edward M. Chen for all purposes.

1 To be related, this action must “concern substantially the same parties, property, transaction
 2 or event” as the *Petru* Action. Civ. Local Rule 3-12(a). Both the *Ulbee* Action and the *Petru*
 3 Action involve the same or similar subject matter and substantially all the same parties. Both of
 4 these cases involve an antitrust class action against six defendants relating to the unilateral and
 5 independent decisions by five of the major publishing houses, in connection with Apple’s launch of
 6 its iBookstore and its iPad device, to begin selling their eBooks pursuant to an agency relationship.
 7 In both cases, plaintiffs allege that the publishing houses purportedly violated the antitrust and
 8 unfair competition laws by switching to a new standard distribution model for eBooks. While there
 9 are some differences between the allegations in the *Petru* Action and the *Ulbee* Action, each case
 10 involves the same core group of defendants and the alleged same conduct.

11 It further appears likely that “there will be an unduly burdensome duplication of labor and
 12 expense or conflicting results” if the *Ulbee* Action were conducted before a different judge than the
 13 California Related Actions. Civ. Local Rule 3-12(a). While the California Related Actions are
 14 pending or would proceed before the Honorable Edward M. Chen in this Court, the *Ulbee* Action is
 15 assigned currently to a different judge, Magistrate Judge Donna M. Ryu. HarperCollins therefore
 16 submits that the interests of judicial efficiency would be served by assigning the *Ulbee* Action to
 17 the Honorable Edward M. Chen for all purposes.

18 Finally, as reflected by the accompanied Declaration of Richard S. Horvath, Jr., the parties
 19 in the *Ulbee* Action do not to oppose this Administrative Motion.

20 DATED: November 3, 2011

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22
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